

(2021) 04 NCLT CK 0039

In the National Company Law Tribunal

Case No : Interlocutory Appeal No. 1493 Of 2020 In Company Petition No. 1584/
IBC/NCLT/MB/MAH Of 2017

M/s. Auspice Trading Private Limited

APPELLANT

Vs

M/s. Global Proserv Limited

RESPONDENT

Date of Decision : 29-04-2021

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 9, 33(1)(b)(iii), 54, 60(5)
National Company Law Tribunal Rules, 2016 — Rule 11
Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 —
Regulation 34, 34(2), 35, 45(3)

Citation : (2021) 04 NCLT CK 0039

Hon'ble Judges : Janab Mohammed Ajmal, J; Ravikumar Duraisamy, Member
(Technical)

Bench : Division Bench

Advocate : G. Aniruth Purusothamam, Dipti Atul Mehta

Final Decision : Allowed

Judgement

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1. This is an Application by the Liquidator of M/s. Global Proserv Limited (hereinafter referred to as the Corporate Debtor) under Sections 54 and 60,,

(5) of the Insolvency & Bankruptcy Code, 2016 (the Code) read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking dissolution",,

of the Corporate Debtor.,,

2. The Company Petition overnumbered under Section 9 of the Code seeking Corporate Insolvency Resolution Process (CIRP) of the Corporate,,

Debtor was admitted by this Tribunal by order dated 23.02.2018, wherein Mr. Sanjay Kumar Ruia was appointed as the Interim Resolution",,

Professional (IRP).,,

3. The IRP published the public announcement for submitting the claim in the Free Press Journal (English) on 12.03.2018 and Navshakti (Marathi) on,,
14.03.2018. The IRP intimated all Banks, financial institutions and other creditors to submit the claim. The IRP took complete charge of the Corporate",,,
Debtor. He received the audited financial statements for F.Y. 2015-16 and 2016-17. The IRP received the claims till 07.04.2018.,,,
4. The Committee of Creditor (CoC) was formed based on claims received. No Financial Creditor filed any claim and only the Operational Creditor,,
filed the claim. Accordingly, CoC consisted only of Operational Creditors. The first meeting of the CoC was held on 11.04.2018. The first progress",,,
report was filed with this Tribunal on 25.04.2018 explaining all the details and the work done by the IRP till the First meeting of the CoC.,,,
5. All the expenses incurred by the IRP, including public announcement, out of pocket expenses and remuneration were ratified. The CoC noted that",,,
the Company had no operations and no assets. Thus the Company would have to be pushed into liquidation The CoC would not be able to afford the,,
fees of the Resolution Professional. It requested the IRP to take charge of the insolvency proceedings as Resolution Professional (RP) but he would,,
not be paid fees for the same. The Interim Resolution Professional accepted the request of the CoC. The Committee, accordingly, resolved to appoint",,,
the IRP as the Resolution Professional of the Corporate Debtor.,,,
6. That the CoC in its first meeting decided looking in to the state of affairs of the Corporate Debtor, that there was no scope of its revival. It had",,,
been non- operative for the last two years, and did not have any employees. The CoC decided that the Corporate Debtor should be liquidated as non-",,,
going concern. It accordingly unanimously passed the resolution to liquidate the Corporate Debtor as such.,,,
7. That the RP on behalf of CoC filed the Application for liquidation in MA. No. 403 of 2018 on 25.04.2018 with this Authority. The same was,,
allowed on 29.08.2019. It was also observed by this Tribunal that, Insolvency and Bankruptcy Board of India vide its letter bearing no.",,,
IBBI/IP/GCHP/2018/54/32/379 dated 28.07.2018 informed this Tribunal that, it had issued the show cause notice to Mr. Sanjay Kumar Ruia, the IRP",,,
and acting as the RP of the Corporate Debtor. Pursuant to the said notice he was not entitled to act as IRP/RP or Liquidator, in any case, until the",,,

issue was resolved. This Tribunal directed the CoC to convene the meeting latest by 15.09.2018 to be chaired by the Representative of Operational,,

Creditors having the highest voting share i.e., M/s. Auspice Trading Pvt. Ltd. having 41.35% voting share, to decide the name of the Liquidator. Once",,,

the Liquidator was appointed, he/she could take charge of the Corporate Debtor and complete the liquidation process.",,,

8. That the CoC in its meeting on 30.08.2018 unanimously decided to appoint Mrs. Dipti Atul Mehta (the Applicant herein) as the Liquidator as per,,

consent given by her in Form-2. The CoC resolved to fix the remuneration at not more than Rs. 5,00,000. The Authorized Representative mentioned",,,

the matter before this Tribunal on 04.09.2018 and informed receipt of consent from the Applicant to act as the Liquidator. This Tribunal by order,,

dated 29.08.2018 appointed the Applicant as the Liquidator of the Corporate Debtor.,,,

9. The Applicant took the charge of the Corporate Debtor on 05.09.2018 and made public announcements in Free Press Journal (English) and,,

Navshakti (Marathi) on 06.09.2018 and 07.09.2018 respectively. The Applicant visited the registered office of the Corporate Debtor on 10.09.2018.,,,

Intimation letter of liquidation and appointment of Liquidator were sent to the Statutory Authorities and Banks where the accounts of the Corporate,,

Debtor were maintained. The Applicant also informed the MCA by uploading the INC-28 along with the copy of order of liquidation. The status of the,,

company has since been changed to one â??under liquidationâ?? as per Section 33(1)(b)(iii) the Code.,,,

10. The Applicant filed the MA bearing no. 1325 of 2018 under Regulation 35 of IBBI (Liquidation Process) Regulations, 2016 (the Regulations) on",,,

29.10.2018 seeking â??waiverâ?? of appointment of registered valuer as the Corporate Debtor did not have any assets to be valued. Further, except",,,

Income Tax refund of Rs.2,08,58,804/- and VAT refund of Rs. 1,33,61,192/- no other assets were available in the last balance sheet. The Tribunal by",,,

order dated 10.01.2019 allowed the Application and waived the appointment of Registered Valuers as required under Regulation 34 (2) of the,,

Regulations.,,,

11. The Corporate Debtor had availed a Credit Facility to the tune of Rs. 225 Crores from the ICICI Bank, the original lender and had executed the",,,

deed of hypothecation on 06.02.2009 in favour of the Bank. The said charge was satisfied by repayment. However, the Corporate Debtor had not",,,

filed the necessary Form (for what??) with the MCA (Ministry of Corporate Affairs) indicating satisfaction of the debt and the charge. The Universal,,

Trusteeship Limited (formerly known as 3i Infotech Trusteeship Services Ltd.) was the Charge holder vide ID 10141789 as the Security Trustee for,,

the Working Capital facility. The Applicant vide letter dated 28.12.2018 requested the Universal Trusteeship Limited to issue the "No Objection,,

Certificate" for release of charge in respect of the Credit Facility. The Universal Trusteeship Limited vide its letter dated 10.04.2019 gave its,,

"No Objection" for filing the CHG-4 for charge satisfaction with the MCA. The Corporate Debtor filed the CHG-4 on 12.04.2019 and the MCA,,

issued the certificate of satisfaction of charge on 12.04.2019 in favour of Corporate Debtor.,,,

12. That the Corporate Debtor received the Income Tax refund amount Rs.33,74,660/- on 12.11.2018 in its bank account number 00602320002791 of",,,

HDFC Bank Fort Branch. That the Applicant after filing the accounts of the Corporate Debtor for Financial Year 2017-18 requested Income Tax,,

authorities by letter dated 11.12.2018 to give the NOC cum Confirmation letter that no dues or demand was pending on behalf of the Corporate,,

Debtor with the Income Tax authorities. The Authority concerned by letter dated 17.01.2019 confirmed the same and issued a No Dues Certificate.,,,

13. The Applicant held the first consultation meeting with the stakeholders on 26.03.2019 and informed them the work done by her till that time and,,

how she was planning to go ahead with the liquidation process. The Applicant prepared and submitted the Assets Memorandum and Preliminary,,

Report on 12.11.2019 as per Regulation 34 of the Regulations, to the effect that there were no assets of the Corporate Debtor. The Applicant filed the",,,

first liquidation quarterly progress report on 15.01.2019. In which she mentioned all the details of works done by her till that period. Thereafter she had,,

filed progress reports from time to time on 15.04.2019, 15.10.2019 and on 06.01.2020.",,,

14. The Applicant has opened the liquidation account in HDFC Bank bearing account no. 50200037440281 in the name of "Global Proserv Ltd. in,,

Liquidation" on 27.02.2019. The Applicant has closed all the other bank accounts in the name of Corporate Debtor in the Bank of Maharashtra,,

and HDFC Bank and got all the monies lying in the said accounts transferred to the Liquidation account.,,

Global Proserv Limited, Amount in Rs.,

Bank Balance,,

HDFC Bank Liquidation A/c, "1,46,88,774.63",

Bank of Maharashtra, "7,42,478",

Total, "1,54,31,253",

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Retention:, "21,89,488",

''

Distributable Amount, "1,32,41,765",

''

Insolvency Cost:,,

Legal fees (Rs.1,50,000/- X 6 months

i.e. from Feb, 2019 to July, 2019)", "9,00,000",

''

Advertisement - Public announcement, "20,512",

''

Consultancy fees (Sales Tax &

Income Tax appear & refund) - Willard

Advisory Pvt. Ltd.", "10,80,000",

''

Total, "20,00,512",

''

Balance Distributable Amount, "1,12,41,253",

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Distribution to stakeholders:, Amount in Rs., %

Auspice Trading Private Limited, "46,48,258", 41.35%

Spruce Trading Private Limited, "31,01,462", 27.59%

Net Work Telelink Private Limited, "21,31,341", 18.96%

Infro-Alliance Trading Private Limited,"13,60,192",12.10%

Total,"1,12,41,253",100.00%

litigation pending by or against Corporate Debtor. There are no pending liabilities in the name of Corporate Debtor. Except the bank account,,

mentioned above there are no other bank accounts in the name of Corporate Debtor. There are no assets in the Corporate Debtor.,,

19. After the distribution made by the Applicant, she had made an application to HDFC Bank, Fort Branch for closure of the Liquidation Bank",,,

account on 28.02.2020. However, as the application was misplaced by the bank personnel. The Applicant again submitted the application on",,,

25.06.2020 for closure of the Liquidation Bank Account after which the Liquidation bank account held with HDFC Bank has been closed.,,

20. That the Applicant prepared the Final Report and filed the same with the Registry of this Tribunal on 26.02.2020 and the same was intimated to,,

the Bench on 27.02.2020 at the time of hearing. The copy of final report was submitted to the Registrar of Companies, Mumbai in form GNL-2 and",,,

was sent to the IBBI through email on 18.03.2020.,,

21. That the Applicant prepared the compliance certificate under Regulation 45(3) of the Regulations in form Form-H. Therefore, Applicant submits",,,

that the Applicant has fulfilled all her duties as per the Code and has done all the compliances as per the time-line provided under the Regulations.,,

Hence this Application.,,

22. On examining the submissions made by the Counsel appearing for the Applicant and the documents annexed to the Application, it appears that the",,,

affairs of the Corporate Debtor have been wound up and its assets have been completely liquidated. We are satisfied from the documents on record,,

that the liquidation is not with intent to defraud any person. The bank account for the purpose of liquidation has been closed. The above facts and,,

circumstances indicate that due process of liquidation, as per extant provisions and in the manner indicated in the Code and Regulations, have been",,,

followed by the Liquidator to liquidate the assets of Company and the realized amounts have also been distributed among the respective claimants.,,

The liquidation process has been duly completed as per the provisions of the Code. Thus, it would be just and equitable for this Authority to dissolve",,,

the Corporate Debtor. No party is going to be adversely affected thereby. In view

of the above the Corporate Debtor deserves to be dissolved. Hence,,
ordered.,,

ORDER,,

The Application be and the same is allowed, as follows.",,

i. M/s. Global Proserv Limited, the Corporate Debtor, is hereby dissolved with immediate effect;","

ii. The Registry is directed to forward a certified copy of this order to the Registrar of Companies, Mumbai within a period of seven days;","

iii. The Liquidator is discharged.,,

iv. CP No. 1584/IBC/NCLT/MB/MAH/2017 also stands closed.,,